

BEFORE THE FEDERAL ELECTION COMMISSION

2005 MAY 23 A 11: 32

In the Matter of)
Committee to Elect Charles Walker) MUR 5418
and Lourdes Gomez, as treasurer)

GENERAL COUNSEL'S REPORT¹

SENSITIVE

I. ACTIONS RECOMMENDED

Find probable cause to believe that the Committee to Elect Charles Walker ("Walker Committee" or "Committee") and Lourdes Gomez, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f); take no further action; send a letter of admonishment and close the file.²

II. DISCUSSION

This case stems from a previous matter (MUR 5328) that dealt with dual leadership PACs associated with Representative Nancy Pelosi. In that matter, the Commission determined that the two PACs, Team Majority and PAC to the Future, were affiliated and therefore shared the same contribution limit, i.e., \$5,000 to any candidate and his or her authorized political committees. *See* 2 U.S.C. § 441a(a)(2)(A). Since the PACs each made a \$5,000 contribution to the Walker Committee for the 2002 general election, the Committee received a \$5,000 excessive contribution. *See* 2 U.S.C. § 441a(f).

One of the affiliated committees, Team Majority, requested refunds from several candidate committees that had received contributions from both PACs. While most of

¹ In order to avoid confusion with the numbered General Counsel's Reports in MUR 5328 (from which this case was severed), we have not numbered the reports in this MUR.

² Ms. Gomez became treasurer of the Walker Committee on October 1, 2003, as reported in an amended Statement of Organization electronically filed on that date.

1 the committees quickly complied with the request, the Walker Committee failed to ever
2 refund the contribution, much less within the sixty days required by 11 C.F.R. § 103.3(b).
3 Accordingly, the Commission internally generated the Walker Committee and made a
4 reason-to-believe finding against it.

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Following our efforts to conciliate the matter, the ensuing investigation confirmed
that the Walker Committee received at least two refund requests from Team Majority and

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1 that Committee staff had actually discussed whether or not to issue the refund.⁵ The
2 Committee concluded that they did not have sufficient funds; however, our review of
3 disclosure reports showed that the Committee received roughly \$91,000 in contributions
4 between the initial request on October 25, 2002 and the week following the election. A
5 General Counsel's Brief ("GC's Brief") recounting these facts was sent to the Walker
6 Committee.

7 Respondents' counsel does not contest the substantive facts or legal conclusions
8 contained in the GC's Brief. *See* Reply Brief at 1. Counsel focuses exclusively on the
9 "very poor financial position" of the candidate following his unsuccessful campaign. *Id.*
10 Accordingly, based on the evidence set forth in the GC's Brief, this Office recommends
11 that the Commission find probable cause to believe that the Committee to Elect Charles
12 Walker and Lourdes Gomez, as treasurer, violated 2 U.S.C. § 441a(f). However, as
13 discussed below, we believe the Commission would be best served by not expending
14 further resources pursuing this matter.

15 **III. DISPOSITION**

16 The attachments to the Reply Brief provide, for the first time, a glimpse into
17 Mr. Walker's financial status.

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⁵ A call log spreadsheet prepared by Team Majority indicates that representatives of numerous recipient committees were contacted by phone on October 25, 2002, including "Lorraine" with the Walker Committee. *See* GC's Brief at 5. Lorraine Miller, who coordinated get-out-the-vote efforts for the Committee, recounted a meeting in the candidate's office around that time, during which there was a discussion as to whether to refund Team Majority's contribution. She recalled that Committee staff concluded that the campaign lacked sufficient funds to issue a refund. Team Majority appears to have memorialized the phone conversation with Ms. Miller in a November 21, 2002 letter received by the Walker Committee at its headquarters in Augusta, Georgia. *See* GC's Brief at 6. A copy of a Federal Express invoice indicates that the letter was delivered on November 22, 2002, and signed for by "L. Gomez," an apparent reference to the Walker Committee's current treasurer, Lourdes Gomez.

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14 We are not unmindful that there are reasons for proceeding further in this matter.

15 First, while we recognize that Mr. Walker was not a named respondent in this matter, we

16 believe it is in the Commission's interest to encourage candidates to accept some

17 responsibility for the violations of their authorized committees, as did the other candidate

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1 whose committee was similarly situated and represented by the same counsel, and as
2 other non-respondent candidates have done in recent cases.⁸

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4 Finally, the underlying conduct
5 was egregious; the Committee appears to have considered and deliberately ignored
6 Team Majority's refund request, even as numerous contributions were still being received
7 by the Committee.⁹ With over two and a half years yet to run on the statute of
8 limitations, we could also consider proceeding personally against the former treasurer
9 who failed to refund the contribution.

10 On the other hand, it is not clear either that the former treasurer had any personal
11 involvement in the decision to ignore the refund request or that he received notice of the
12 Commission's reason-to-believe finding against the Committee.¹⁰ Also, while it is
13 difficult to accurately gauge the candidate's financial status based on the submitted
14 documents, it does appear that his financial position is somewhat tenuous
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16 Further, he would not appear to be personally liable for his committee's failure to issue a

⁸ See, e.g., Conciliation Agreement in MUR 5263 (Florio for Senate Committee) (non-respondent candidate "negotiated to pay the civil penalty . . . for [his committee's] violation of 2 U.S.C. § 441a(f)"); MUR 5050 (Amorello for Congress) (Commission accepted agreement with reduced civil penalty after non-respondent candidate agreed to personally pay civil penalty, and after candidate submitted detailed personal financial records).

⁹ Team Majority does not appear to have explicitly advised the Walker Committee that the \$5,000 constituted an excessive contribution; it also may not have raised the issue of affiliation. In its letter to the Walker Committee, Team Majority simply stated that the FEC "has received a complaint regarding the PAC," adding that, "[i]n light of this development, it is most important that the contribution be returned . . . as soon as possible."

¹⁰ During our interview with Ms. Miller (see fn. 5), she was unable to recall with any certainty who participated in the discussion concerning the refund request. Pursuant to the Commission's prior treasurer policy, we dropped the former treasurer and substituted the new treasurer when the Committee filed an amended Statement of Organization around the time of the reason-to-believe finding.

1 refund.¹¹ Finally, it may not be an efficient use of the Commission's resources to pursue
2 the Walker Committee when, even if we succeeded in securing a monetary judgment, the
3 Committee could probably never satisfy the judgment. Accordingly, in consideration of
4 these factors, this Office recommends that the Commission take no further action against
5 the Committee to Elect Charles Walker and Lourdes Gomez, in her official capacity as
6 treasurer, send an admonishment letter and close the file in this matter.

¹¹ We do not know, for example, how involved the candidate was in accepting the contribution or in deciding not to return it. See fn. 10

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IV. RECOMMENDATIONS

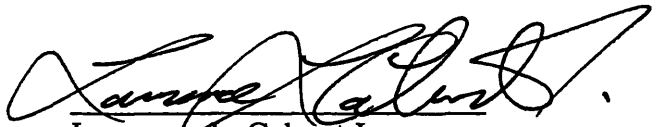
1. Find probable cause to believe that the Committee to Elect Charles Walker and Lourdes Gomez, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f), but take no further action and send an admonishment letter.
2. Close the file.
3. Send the appropriate letters.

Date

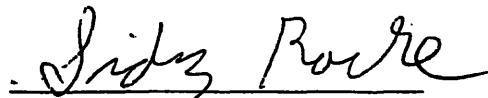
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